

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

TARA VILK,	)	Case No. 5:24-cv-821
	)	
Plaintiff,	)	Judge J. Philip Calabrese
	)	
v.	)	Magistrate Judge Reuben J. Sheperd
	)	
IS ACQUISITION, INC.,	)	
	)	
Defendant.	)	
	)	

**OPINION AND ORDER**

On December 14, 2024, the Magistrate Judge issued a Report and Recommendation that the Court dismiss this action without prejudice for failure to prosecute. The Report and Recommendation advised both parties that a failure to object within 14 days may result in waiver of rights on appeal, which includes the right to review before the Court. (*See* ECF No. 11, PageID #76–77.) Under the law of this Circuit, “failure to object to a magistrate judge’s Report and Recommendation results in a *waiver* of appeal on that issue as long as the magistrate judge informs parties of that potential waiver.” *United States v. Wandahsega*, 924 F.3d 868, 878 (6th Cir. 2019) (emphasis added); *United States v. Walters*, 638 F.2d 947, 949–50 (6th Cir. 1981); *see also Thomas v. Arn*, 474 U.S. 140, 152 (1985) (holding that the Sixth Circuit’s waiver rule is within its supervisory powers and “[t]here is no indication that Congress, in enacting § 636(b)(1)(C), intended to require a district judge to review a magistrate’s report to which no objections are filed”).

The Sixth Circuit has clarified that failure to object is not a waiver, but a forfeiture. *Berkshire v. Beauvais*, 928 F.3d 520, 530 (6th Cir. 2019) (“We clarify that forfeiture, rather than waiver, is the relevant term here.”). This is so because “[w]aiver is different than forfeiture.” *United States v. Olando*, 507 U.S. 725, 733 (1993); *Freytag v. Commissioner*, 501 U.S. 868, 894 n.2 (1991) (Scalia, J., concurring) (noting the Supreme Court’s cases “often used [waiver and forfeiture] interchangeably,” but that “[t]he two are really not the same.”). This difference matters because forfeited issues may, in certain circumstances, nevertheless be considered on appeal.” *Berkshire*, 928 F.3d at 530 (citing *Harris v. Klare*, 902 F.3d 630, 635–36 (6th Cir. 2018)).

In any event, the time for filing objections to the Report and Recommendation has passed. No party objected or provided some legitimate reason for a failure to do so. Further, upon the Court’s independent review of the record, there does not appear to be clear error in the Magistrate Judge’s Report and Recommendation. Therefore, the Court **ADOPTS** the Report and Recommendation (ECF No. 11) and **DISMISSES** the action **WITHOUT PREJUDICE**. Further, the Court **DIRECTS** the Clerk to enter judgment accordingly.

**SO ORDERED.**

Dated: December 31, 2024

A handwritten signature in black ink, appearing to read 'J. Calabrese', with a long horizontal flourish extending to the right.

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J. Philip Calabrese  
United States District Judge  
Northern District of Ohio